

MEMO ENDORSED



United States Attorney
Southern District of New York

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August 9, 2024

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By ECF and Email

The Honorable Nelson S. Román
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: *United States v. Brian Rodriguez*, 19 Cr. 449 (NSR), 24 Civ. 531 (NSR)

Dear Judge Román:

The Government respectfully submits this letter to request an extension of time to respond to the defendant's Section 2255 motion.

On January 25, 2024, defendant Brian Rodriguez moved, pursuant to 28 U.S.C. § 2255, to vacate his conviction and sentence, alleging that his attorney—Howard E. Tanner, Esq.—provided ineffective assistance of counsel in connection with his decision to plead guilty. On April 15, 2024, the defendant, through retained counsel Richard D. Willstatter, Esq., submitted an amended motion to vacate pursuant to Section 2255, which reiterated the defendant's allegations that his prior attorney, Mr. Tanner, provided ineffective assistance.

On June 13, 2024, the Government submitted a letter requesting that the Court find that the defendant had waived the attorney-client privilege with respect to Mr. Tanner, or, in the alternative, requiring the defendant to execute such a waiver.¹ (Dkt. No. 291.) On June 27, 2024, the defendant filed a letter attaching an unsigned declaration waiving attorney-client privilege with respect to Mr. Tanner. (Dkt. No. 294.) The following week, on July 2, 2024, the defendant filed a signed declaration waiving the same. (Dkt. No. 296.) In the meantime, the Court endorsed the defendant's June 27, 2024 filing, instructing in relevant part “[t]o the extent the Government may request an affidavit of Mr. Tanner pertinent to the 28 U.S.C. § 2255 motion, he is directed to provide such affidavit.” (Dkt. No. 295.) The Court's order also instructed the Government to file its response to the amended 2255 motion by August 15, 2024. *Id.*

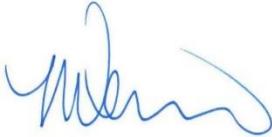
¹ In June of 2024, prior to filing the response described herein, counsel for the Government spoke with Mr. Tanner and asked if he would be willing to file an affidavit if the defendant waived the attorney client privilege, and if ordered by the Court. Mr. Tanner indicated that he would so file.

The Government understands that Mr. Tanner was on trial in Kings County Supreme Court, Part 34, before Judge Eugene M. Guarino from July 11, 2024 through August 2, 2024, and that he does intend to file the required affidavit by no later than 45 days from today, or September 23, 2024. For the reasons stated in the Government's letter dated June 13, 2024, the Government respectfully submits that Mr. Tanner's affidavit is necessary in order for the Government to respond to the defendant's 2255 motion. This is especially true where, as here, the defendant has alleged particular representations by Mr. Tanner – including that "Mr. Tanner repeatedly told his client that 'it does not matter if the gun was fake' and that 'the government does not want to hear the gun was fake'" – which are not supported by, and indeed are absent from, the accompanying declaration by Mr. Willstatter, which purports to reflect a conversation between Mr. Willstatter and Mr. Tanner regarding the latter's representation of the defendant. (*Compare* Dkt. No. 283 at 4 with Dkt. No. 284 ¶¶ 2-6.)

Accordingly, the Government respectfully requests an extension of the Government's deadline to respond to the defendant's motion to 45 days after the submission of Mr. Tanner's affidavit.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

by: 
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Assistant United States Attorney
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cc.: Richard D. Willstatter, Esq., *Counsel for Petitioner* (by ECF and email)

The Government's request is GRANTED. The deadline for the Government to respond to Petitioner's motion is October 23, 2024. The Clerk of Court is directed to terminate the motion at ECF No. 299.

Dated: August 9, 2024
White Plains, NY

SO ORDERED:


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE